

SPECIAL CIVIL APPLICATION No 5565 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHBHAI DHARAMSINHBHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/1999

ORAL JUDGEMENT

#. The petitioner came to be detained by virtue of an order passed by Commissioner of Police, Rajkot City, Rajkot, dated March 5, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short).

#. The detaining authority took into consideration, in the grounds of detention, the two registered offences against the petitioner relating to theft of motorcycles registered vide C.R. No.71/99 and 81/99 with Rajkot City "A" Division Police Station. The detaining authority also took into consideration the statements of following two witnesses :-

- (1) Shri Dilip Dhirajlal Madhani.
- (2) Shri Kaushikbhai Arvindbhai Soni.

Taking into consideration the offences registered as well as the statements recorded by the sponsoring authority, the detaining authority recorded that the petitioner is a dangerous person as contemplated under the PASA Act. The authority also came to a conclusion that considering the two offences and the two statements, the activities of the petitioner are illegal and anti-social in nature, which are detrimental to the maintenance of public order and public security. The authority also recorded that it has verified about the statements made by the witnesses in respect of fear expressed by people at large and that it is satisfied that there is a great danger to the people at large from the petitioner. After considering the possibility of resorting to less drastic alternative remedies, the detaining authority came to a conclusion that in order to immediately prevent the petitioner from pursuing his illegal activities which are detrimental to public order, action under the PASA Act is necessary and, therefore, the order.

#. The petitioner has challenged the order of detention by this petition under Article 226 of the Constitution mainly on the ground that the subjective satisfaction recorded by the detaining authority as regards the activities of the petitioner being detrimental to public order is not based on any material before the authority. The authority has passed the order without application of mind. The authority has not cared to verify the correctness or genuineness of the statements made by the witnesses and still it has stated in the order that it has verified the correctness and genuineness about the fear expressed by the witnesses and, therefore, the order is based on incorrect fact situation.

#. The respondents have not filed any affidavit in

reply.

#. Ms. Kachhavah, learned advocate appearing for the petitioner, has raised number of contentions. One of them being that, though the detaining authority has recorded that it has verified the correctness and genuineness of the fear of people at large, as stated by the witnesses, there is nothing to indicate the verification claimed to have been made by the detaining authority. The copies of the statements indicate that they have not been verified by the detaining authority and there is no other material to indicate that the detaining authority had in any other manner verified the correctness and genuineness of the statements made by the witnesses. Ms. Kachhavah submitted that the statements of the two witnesses recorded by the sponsoring authority are the same who have lodged F.I.Rs. against the petitioner. In their complaints, there is nothing to indicate the danger to public order situation as is appearing in the statements. The authority has not applied its mind to this aspect and, therefore, the entire order would stand vitiated and may be quashed. She submitted that the allegations made in the written statements of the witnesses are vague, non-specific and not based on any independent or cogent material and, therefore, these statements without being cross-checked ought not to have been relied upon by the detaining authority and, therefore, she submitted that the petition may be allowed.

#. Mr. H.H. Patel, learned Assistant Government Pleader appearing for the respondents, stated that the statements of two witnesses clearly indicate that the activities of the petitioner had spread the feeling of fear in the minds of people. He submitted further that, it is true that the statements of these two witnesses are not verified by the detaining authority because the authority has not exercised the powers under Section 9(2) of the PASA Act, there was no need for the authority to verify the statements. He pressed into service the decision of this High Court in case of Amanullahkhan Kudratullahkhan Pathan v. State of Gujarat & Ors., 1999 GLH 1003 and submitted that the public order was at stake and, therefore, the detaining authority has rightly exercised the powers with which it is invested. The petition may, therefore, be dismissed.

#. Adverting to the rival side contentions, what glaringly transpires is that the detaining authority has

placed reliance on two offences registered against the petitioner regarding theft of motorcycles. The two statements which are recorded by the sponsoring authority are of the complainants in these two registered cases. The two statements which are relied upon by the detaining authority to arrive at a subjective satisfaction that the activities of the petitioner were detrimental to public order and that the activities of the petitioner had resulted into an atmosphere of fear in the minds of people at large regarding security of their property are based not on any personal knowledge, but only on basis of the newspaper reports and the investigation done by the police. The detaining authority, therefore, had no independent material before it to arrive at a subjective satisfaction that the activities of the petitioner are detrimental to public order. The allegations made in the statements needed to be cross-checked/verified by the detaining authority before accepting the same. It is not that the detaining authority has overlooked this aspect while passing the impugned order. In paragraph 5 of the grounds of detention it has stated that it has verified about the fear expressed by the witnesses in respect of people at large and it is satisfied that that people at large have a great danger from the petitioner. For recording this satisfaction, there is not an iota of material barring the said statements of witnesses, not based on personal knowledge but on newspaper reports, on which the authority could have based its satisfaction. The order, therefore, suffers from non-application of mind. In fact, a plain perusal of the statements of the witnesses indicate that the same have not been verified. This aspect is conceded to by the learned Assistant Government Pleader. Now, therefore, there is nothing to indicate how and in what manner the detaining authority verified and satisfied itself about the correctness of the statement made in respect of the fear expressed to have been suffered by members of public at large.

#. In view of the above, the order suffers from the vice of non-application of mind and subjective satisfaction recorded by the detaining authority about the activities of the petitioner being detrimental to public order would stand vitiated. The order, therefore, deserves to be quashed and set aside.

#. The decision relied upon by Mr. Patel, learned Assistant Government Pleader, in the case of Amanullahkhan (supra), as delivered by Gujarat High Court, it is clear that the Court came to conclusion after taking into consideration the magnitude of the activities disclosed by the confidential witnesses and

said that public order was disturbed in facts of that case. It also transpires from the judgment that the witnesses gave a specific and detailed record of the incidents that they had witnessed (paragraph 13 and 14 of the judgment), whereas in the instant case, statements of the witnesses are vague. They do not relate to any specific incident. The generalized opinion of the witnesses is based on newspaper reports and the investigation carried out by the Investigating Agency in respect of the cases registered against the petitioner. It does not divulge any personal knowledge by the witnesses. It was incumbent upon the detaining authority, therefore, to verify the correctness and genuineness of the statements made by the witnesses in respect of the fear claimed to have been suffered by the members of public at large. This was deemed necessary even by the detaining authority and, therefore, it is recorded in the grounds of detention that it has verified the same, but the record indicates otherwise. The statements of witnesses are not verified and there is no other material to indicate that the detaining authority had in any other manner verified the correctness of the statements. The detaining authority has not come out with any affidavit in reply and, therefore, this Court is at loss to know or consider as to what was verified by the detaining authority other than the statements of the witnesses which are, in fact, not verified. The order of detention, therefore, can be said to have been based on subjective satisfaction of the detaining authority regarding the detenu being a 'Dangerous Person' as envisaged under PASA Act or for the need to detain him in order to immediately prevent him from his illegal and anti-social activities. In this view of the matter, the petition deserves to be allowed.

##. In the result, the petition is allowed. The order of detention dated 5th March, 1999, in respect of the petitioner-Maheshbhai Dharamshibhai Parmar is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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